IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19/11/2003

CORAM

THE HONOURABLE MR.JUSTICE A.S.VENKATACHALAMOORTHY
AND
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT PETITION No.11503 of 2000

1. The State of Tamilnadu, rep.by its
Secretary to Government,
Education Department,
Fort St.George, Chennai-9.

2. The Director of School Education,
Chennai-6.

3. The Chief Educational Officer,
Nagercoil.

4. The District Educational Officer,
Kuzhithurai,
Kanyakumari District. ... Petitioners

-Vs-

1. Micheal Arul Balan,
S.o.Mudiappan

2. The Registrar,
Tamilnadu Administrative Tribunal,
Chennai-104. ... Respondents

Writ petition under Article 226 of the Constitution of India
praying for issuance of a writ of certiorari as stated therein.

!For petitioners .. Mr.S.T.S.Moorthy,
Spl.Government Pleader.

^For Respondents .. Mr.G.Muthukrishnan, for R-1

:ORDER

C.NAGAPPAN,J

The state Government has filed this writ petition seeking for quashing the order of the Tamil Nadu Administrative Tribunal, dated 3.5.20 00, made in O.A.No.1069 of 2000.

2. The first respondent filed the application before the Administrative Tribunal to quash the order, dated 24.12.1999, passed by the Chief Educational Officer, Nagercoil, the third petitioner and consequently to direct the petitioners to appoint him as School Assistant on compassionate ground in his capacity as legal heir of the deceased mother V.Mary, who died on 2.11.1966 while working as Secondary Grade Teacher in the Government School at Ananthamangalam.

According to the first respondent, his mother died on 2.11.1966, prior to the promulgation of the Scheme of providing employment to the dependents of the Government Servant, who dies in harness, leaving the family in penury and he was 18 months old child at that time. The first respondent has further stated that his father was selfemployed as "Nattu Vaithiyar" and did not have regular income and he remarried on 26.2.1968 and the first respondent stayed with his maternal grandmother who educated him upto fifth standard and later he was admitted in an Orphanage where he studied from sixth standard to tenth standard during the years 1976 to 1981. It is the further case of the first respondent that he joined Society of Provincial Carmelite Fathers at Trichy and did the initiation course between 1981 and 1982 and became a member of Religious Congregation and continued to stay in the Society for eight years during which time, he studied Higher Secondary Course and B.A.Philosophy course and became a graduate in the year 1988 and on 17.11.1988, he applied to the District Educational Officer, Kuzhithurai, the fourth petitioner, for the post of Junior Assistant in the Education Department on compassionate ground as the son of the deceased V.Mary, who died on 2.11.1966 while working as Secondary Grade Teacher and he did not get any reply. The first respondent has further stated that he continued his studies through correspondence and completed M.A. Literature in English in the year 1991 and also completed his B.Ed. in June, 1992. According to the first respondent, the application made in the year 1988 was rejected in the year 1997 and he sent another application in June, 1997 to the fourth petitioner seeking for appointment as School Assistant on compassionate ground and he received a reply by letter, dated 13.8.1997, stating that the application for appointment on compassionate ground should have been submitted as soon as the applicant completed his S.S.L.C. or before completion of 30 years, whichever was earlier and since the applicant did not do so, it is time barred and hence rejected.

It is further stated by the first respondent that the second petitioner wrote a letter on 22.1.1999 to the third petitioner and the third petitioner by letter, dated 17.2.1999, called upon him to submit a regular application in full form and accordingly, he submitted the application, dated 25.3.1999, along with the enclosures and that application came to be rejected by the second petitioner by order, dated 2 9.11.1999 and it was communicated by the order of the third petitioner, dated 24.12.1999, in which, it is stated that the father's name of the applicant has not been shown as legal heir in the Heirship Certificate issued by the Tahsildar and it is

also not stated as to in what job the father was working at the time of death of his wife and it is further stated that the Government Servant died in the year 1966, whereas the Government Order providing for compassionate appointment came only in the year 1972 and hence the req uest cannot be considered. The first respondent challenged the order, dated 24.12.1999, by filing O.A.No.1069 of 2000 in the Administrative Tribunal and the Tribunal concluded that the applicant is entitled to appointment on compassionate ground and allowed the application. Challenging the same, the State has preferred the present writ petition.

3. A counter has been filed by the first respondent stating that he made his first application seeking compassionate appointment when he was 23 years old and the second application was made when he was 32 years and later, he filed his third application when he was 34 years old and all the three applications came to be rejected without proper enquiry and the certificate has been issued by the Tahsildar after verification and the Tribunal has passed the order on merits and there is no need to set aside that order.

4. The learned Special Government Pleader appearing for the petitioners contended that the object for providing compassionate appointment is to uplift the family from the immediate financial crisis that would arise on the death of the Government servant and the plea of the first respondent for appointment on compassionate ground cannot be considered after 33 years of his mother's death and the entire approach of the Administrative Tribunal is erroneous and legally unsustainable. Per contra, the learned counsel appearing for the first respondent contended that the first respondent applied thrice at different intervals from the year 1988 onwards and as per the latest Government Order, dated 19.1.1998, the upper age limit for considering

appointment on compassionate ground has been raised to 35 years and the first respondent satisfied the requirements for appointment and the Tribunal has rightly allowed the claim.

5. The mother of the first respondent by name V.Mary was working as Secondary Grade Teacher in the Government School at Ananthamangalam and she died on 2.11.1966 while in service leaving behind her husband and the first respondent who was 18 months old child. At that time, there was no scheme providing for appointment on compassionate ground on the death of the Government servant. The Government passed order in G.O.Ms.No.225, dated 15.2.1972, providing for appointment to the legal heirs of the Government Servants who died after 15.2.1972 on compassionate ground. The first respondent was a minor at that time and the benefit of the above Government Order cannot be claimed on account of the death being in the year 1966. The Government passed another order in G.O.Ms.No.1579, dated 21.7.1981, in which it permitted the legal heirs of the Government Servants who died prior to 15.2.1972 also to apply for job on compassionate ground. The benefit of this G.O. may be applicable to the first respondent, provided he fulfills the requirements.

6. According to the first respondent, his father was

selfemployed as "Nattu Vaithiyar" and did not have regular income and he remarried on 26.2.1968 forcing him to stay with his maternal grandmother who educated him upto 5th standard and later he was admitted in an Orphanage where he studied from 6th standard to 10th standard during the years 1976 to 1981. Later, he chose to become a member of a Religious Congregation by doing initiation course between 1981 and 1982 in the Society of Provincial Carmelite Fathers at Trichy and as its member, studied Higher Secondary Course and B.A.(Philosophy) course and became a graduate in the year 1988. Even though the benefit under G.O. Ms.No.1579, dated 21.7.1981, was available to him, he did not choose to apply for the same till the year 1988. It is the case of the first respondent that he applied to the 4th petitioner, namely, District Educational Officer, on 17.11.1988 for the post of Junior Assistant in the Education Department on compassionate ground as the son of the deceased Government servant and according to him, it was rejected in the year 1997 and in the meanwhile, he continued his studies and obtained M.A. Literature in English in the year 1991 and later B.Ed. degree in the year 1992. In June, 1997 he sent another application to the 4th petitioner seeking for appointment as School Assistant on compassionate ground, which came to be rejected on the ground that he did not seek for appointment as soon as he completed S.S.L.C. or before completion of 30 years, whichever was earlier. The Government raised the upper age limit for appointment on compassionate ground as 35 by Government Order, dated 19.1.1998 and the first respondent submitted his third application, dated 25.3.1999, in full form and that was also rejected by order, dated 29.11.1999.

7. The consideration for compassionate employment must be treated as an exception to the general rule for giving employment only by making open recruitment and consideration of out of turn employment on compassionate ground is intended to enable the family to tide over sudden crisis caused on account of death of the earning member and the Supreme Court in various decisions has emphasized the same. In UMESH KUMAR NAGAPAL vs. STATE OF HARYANA [(1994) 4 SCC 138], their Lordships held as under.
"For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

In JAGDISH PRASAD vs. STATE OF BIHAR [(1996) 1 SCC 301], the question of appointment on compassionate ground to an applicant who was four years old at the time when his father died in harness, came up for consideration and it was contended that the applicant was minor at the time of the death of the father and the compassionate circumstances continued till the date he made an application for appointment and hence he was entitled to the same and that contention was rejected by the Apex Court in the following terms.
"The very object of appointment of the dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the

family. Since the death occurred way back in 1971, in which year the appellant was four years' old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government Servant which cannot be encouraged, dehors the recruitment rules."

In HARYANA STATE ELECTRICITY BOARD vs. NARESH TANWAR AND ANOTHER [(1996) 8 SCC 23], the Apex Court held that compassionate appointment cannot be granted after a long lapse of reasonable period and the very object of appointment is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member and such consideration cannot be kept binding for years.

In the latest decision in SANJAY KUMAR vs. STATE OF BIHAR AND OTHERS [(2000) 7 SCC 192], their Lordships of the Apex Court reiterated the law on the subject by holding as follows.
"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar {(1998) 5 SCC 192]. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

8. Keeping in mind the above legal principles, it has to be seen as to whether the first respondent is entitled to the appointment on compassionate ground. As already seen, at the time of death of his mother as School Teacher in the year 1966, there was no scheme available for appointment on compassionate ground and only in the year 1972, such a scheme came into force and it was only prospective and that benefit was extended retrospectively from the year 1981 covering the death prior to 1972, subject to the applicant satisfying the requirements. The first respondent, having born on 28.5.1965, became a major in the year 1983 and was also qualified but still he did not choose to claim the benefit of appointment. On the contrary, he joined Religious Congregation by becoming a member and further educationally qualified himself under their shelter. In such circumstances, the first respondent cannot claim that he was not having any means of livelihood and the compassionate circumstances continued.

9. The first respondent made his first application only in the year 1988 and did not take any further step for securing early order on that application and he allowed it to be pending for nearly a decade. In the meantime, the first respondent made further progress by obtaining a

post-graduate decree and a bachelors decree in Education. As per the Government Orders, a dependent of a Government servant who died in harness leaving his family in indigent circumstances is eligible to be appointed on compassionate ground and the appointing authority has to satisfy that the family is in indigent circumstances. The first respondent though claimed to have completed his school education in an Orphanage has subsequently joined as a Member in the Religious Congregation in the year 1981 and continued there for eight years and at that point of time itself, the indigent circumstances claimed by the first respondent ceased to exist and he became ineligible for appointment on compassionate ground. Further, in this case, the first respondent has claimed compassionate employment after the crisis is over and also after lapse of a reasonable period and in such circumstances, the employment cannot be granted to him.

10. After the rejection of the first application seeking for compassionate appointment, the first respondent ought to have challenged the same in a manner known to law. This has not been done. But, the first respondent went on filing successive applications seeking for the same relief before the authorities and that course of action is impermissible in law. Looking at any angle, the first respondent is not entitled for compassionate employment and the order of the Tribunal cannot be sustained.

11. In the result, the writ petition succeeds and it is allowed. No costs. Connected WMP No.16468 of 2000 is closed.

Index:yes.
Internet:yes.

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To:

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Education Department,
Fort St.George, Chennai-9.

2. The Director of School Education,
Chennai-6.
3. The Chief Educational Officer,
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4. The District Educational Officer,
Kuzhithurai,
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5. The Registrar,
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